Supreme Court of the United States

October Term, 1977

No. 77-1488

TOINETTE GOLDMAN PERLMAN,
LORETTA DEMSKY and WOODROW WOODY DAVIS,

Petitioners,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States of America:

The petitioners, Toinette Goldman Perlman, Loretta Demsky and Woodrow Woody Davis, pray that a Writ of Certiorari issue to review the judgment and order of the

Court of Appeal of the State of California, Second Appellate District, filed November 23, 1977, affirming the judgment of the Superior Court of the State of California for the County of Los Angeles, which found each of the petitioners guilty of California Penal Code § 182, subdivision 1, conspiracy to commit capping. A timely petition for hearing to the Supreme Court of the State of California was denied January 19, 1978.

The petition in this case raises issues specifically left undecided by this Court's opinion in *Fisher v. United States*, 96 S. Ct. 1569 (1976).

OPINION BELOW

The opinion of the Court of Appeal of the State of California, Second Appellate District, has not been published. A copy of the opinion, filed November 23, 1977, appears in the appendix hereto as Appendix "A" (Appendix pp. 1 - 13). A copy of an order of the Court of Appeal denying a petition for rehearing, dated December 16, 1977, appears in the appendix hereto as Appendix "B" (Appendix p. 14). A copy of the order of denial of a petition for hearing by the California Supreme Court, filed January 19, 1978, appears in the appendix hereto as Appendix "C" (Appendix p. 15).

JURISDICTION

The judgment of the Court of Appeal of the State of California, Second Appellate District, was filed November 23, 1977, affirming the judgment of conviction entered

in the Superior Court of the State of California for the County of Los Angeles. A copy of the opinion of the court appears as Appendix "A" hereto. A timely petition for rehearing to the Court of Appeal of the State of California was thereafter denied on December 16, 1977. A copy of the order of the Court of Appeal appears as Appendix "B" hereto. A timely petition for hearing to the California Supreme Court was denied on January 19, 1978. The order of the California Supreme Court appears as Appendix "C" hereto. The Court's jurisdiction is invoked pursuant to Title 28, United States Code § 1257(3).

QUESTIONS PRESENTED

1. **Whether the state court was incorrect in its conclusions that a client of an attorney completely loses the protections of the Fourth and Fifth Amendments and the confidentiality of the attorney-client privilege because of suspected illegal activity of the attorney directed at third parties. Further, whether the state court is correct that the attorney-client privilege can be destroyed in such circumstances through the direction in a warrant authorizing the inspection of every file and document in an attorney's office, even though the direction in the warrant does not specifically limit the items to be seized to those items relevant to the investigation against the attorney?**

2. **Whether the warrant and seizure pursuant to the warrant in the present case were constitutionally invalid, as constituting a general search, in view of the fact that the practical effect of the warrant for the search of an attorney's**

office was to authorize the seizing agents to inspect every document or file in the attorney's office and to determine, on their own, which files were subject to seizure?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Amendment IV to the United States Constitution provides in part:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

Amendment V to the United States Constitution provides in part:

> "No person shall . . . be compelled in any criminal case to be a witness against himself . . . . "

Amendment XIV to the United States Constitution provides in part:

> " . . . nor shall any state deprive any person of life, liberty, or property, without due process of law . . . . "

Pertinent portions of the following statutory provisions appear in Appendix "D" hereto (Appendix pp. 16 - 17):

California Penal Code § 182.1;

California Business and Professions Code § 6151;
California Evidence Code § 954;
California Evidence Code § 955.

STATEMENT OF THE CASE

The indictment in the present case was filed on January 30, 1975 in the Superior Court of the State of California for the County of Los Angeles. The petitioners here, together with a variety of other individuals, were charged in multiple counts, including count 1 which alleged a conspiracy to commit "capping," pursuant to California Penal Code § 182.1.[1] Various pre-trial motions were heard and denied. Thereafter, a motion to suppress evidence pursuant to the appropriate California statutory scheme was heard, granted in part and denied in part. The motion was denied with respect to the search pursuant to a warrant of one attorney's office.

Eventually, the petitioners, Perlman, Demsky and Davis, entered pleas to a violation of California Penal Code § 182.1 as a misdemeanor.[2] Each of the petitioners was placed on probation for a period of two years. In addition, petitioner Perlman was fined $1,000; petitioner Demsky $200; and petitioner Davis $500. A variety of other conditions was similarly imposed.

Each of these convictions was affirmed by the Court of Appeal, Second Appellate District, Division One, pursuant

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[1] "Capping" is defined in the Business and Professions Code § 6151 (Appendix p. 16). Capping is prohibited pursuant to § 6152.

[2] Under California law the issue of legality of the search is pertinent on appeal after a plea of guilty. California Penal Code § 1538.5(m).

to the unpublished opinion filed November 23, 1977 (Appendix "A"). A timely petition for rehearing with the Court of Appeal was denied on December 16, 1977 (Appendix "B"). A timely petition for hearing to the California Supreme Court was denied January 19, 1978 (Appendix "C").

REASONS FOR GRANTING THE WRIT

I

The State Court Incorrectly Held That The Protections Of The Attorney-Client Privilege And a Client's Fourth And Fifth Amendment Protections Were Completely Destroyed As To Numerous Innocent Clients As A Result Of Allegations Of Illegal Activity Of Their Attorney Directed Against Third Parties. In So Doing, The Court Sanctioned A Search Of The Files Of Numerous Innocent Clients Without Regard To Whether The Individual Files Searched Had Any Relationship To The Alleged Misconduct Of The Attorney.

The evidence against these petitioners was seized as the result of the execution of a warrant directed at five locations, including several attorneys' offices. The warrant authorized the search of each location for each item sought to be seized. The direction in the warrant, and the ultimate search and seizure authorized pursuant to the warrant, included the following:

> "(1) The personal injury case files, *including but not limited to,* retainer agreements, medical bills, insurance settlement agreements and cancelled checks issued to claimants of the following

> personal injury claims pertaining to the following individuals . . .
>
> "(7) The personal injury case files, *including but not limited to,* retainer agreements, medical bills, insurance settlement agreements, release agreements and disbursement sheets of personal injury claims, which files contained the same capper code numbers as described above . . . and/or any *similar capper code numbers.*" (Emphasis added.)

The investigation in this case centered around several attorneys, including attorney Gary Bock, whose office was among those sought to be searched. The petitioners here were employed in Bock's office, or otherwise purportedly associated with the "capping" scheme, whereby persons who had been involved in automobile accidents were referred, for pay, to the attorney's office.

No limitation was imposed upon the broad description in the warrant which would have required the seizure of only those files relating to specific accidents about which the affiant had information. Thus, if a particular client had two or more personal injury cases with attorney Gary Bock, the warrant authorizes seizure of each file, although the very existence of the other case would have been unknown to the affiant or the seizing authority prior to the entry into the attorney's office. Furthermore, there was no limitation on the items within the file which could be examined or seized. In fact, the position of the People of the State of California as expressed at the motion to suppress evidence was that "*entire* files on the clients are relevant and therefore subject to seizure." This sentiment was echoed by the Court of Appeal

in its opinion, at page 11, where the court found that the entire file was relevant and that the material therein was "not protected by the attorney-client privilege."

Several substantial constitutional problems arise. First, although the warrant named *one hundred* individuals whose files were specifically authorized to be searched for and seized, there was no indication that any of these individuals were aware of or participated in the "capping" scheme. Thus, they were by all definitions *innocent* clients. Consequently, the entire file of these innocent clients, which, of necessity, included material of a highly personal nature confided to the attorney in contemplation of litigation, was seized, inspected and viewed by representatives of the State of California, because of an allegation of illegality directed at the client's attorney.

Similarly, the warrant purported to authorize the seizing agents to make their *own* determination as to what other *unspecified* client file could be seized, based upon the *seizing officers' conclusion* that such files contained "similar" capper code numbers. Thus, in contrast to the specific requirements of *Marron v. United States,* 275 U.S. 192 (1927), the ultimate discretion as to what was to be seized was left to the seizing authority. Consequently, files of innocent clients were authorized to be seized, although the affiant, at the time of the execution of the affidavit, was even unaware of their existence.

Finally, the general exploratory nature of the search is demonstrated by further analysis of the direction in the warrant. As indicated in the preceding paragraph, the seizing authority was authorized to examine *each file* in order to determine whether "similar" capper code numbers existed

therein. Thus, every file, and every piece of paper in every file, had to be examined to determine whether such "similar" code numbers existed. Consequently, whether or not such file was seized (in the sense that it was removed from the attorney's office), it was definitely examined and searched under the warrant. Moreover, the warrant, which was directed at five locations, did not specify which items were to be located and seized from which location. Thus, the seizing authority at any one location would be required to examine every file and document within the location to satisfy the direction in the warrant. In fact, a district attorney's investigator who participated in the search testified that prior to the receipt of the warrant he had no specific idea of what to look for and that in the search of Gary Bock's office he looked for everything listed in the warrant.

The facts and circumstances in this case, therefore, bring this case within the scope of issues specifically not resolved by this Court's opinions in *Fisher v. United States,* 96 S. Ct. 1569 (1976), and *United States v. Miller,* 96 S. Ct. 1619, 1624 (1976) at footnote 4. In *Fisher* this Court relied upon the fact that no Fourth Amendment violation was claimed to have existed (96 S. Ct. 1569, n. 5). In the present case, however, a Fourth Amendment claim certainly exists as a result of the overbreadth of the warrant, as described above Consequently, the cases cited in this Court's opinion at footnote 5 are particularly relevant with regard to both the Fourth and Fifth Amendment claims raised here.

Secondly, in *Fisher,* this Court had occasion to consider documents transmitted to an attorney for the purpose of seeking legal advice, but which would have been otherwise

subject to seizure from the individual himself, thus avoiding a Fifth Amendment difficulty. The Court, at the same time, recognized that an attorney is not bound to produce documents delivered to him by his clients for the purpose of seeking legal advice, which would be otherwise privileged if possessed by the client (96 S. Ct. 1577). In this case, however, the warrant authorized the seizure of the *confidences* related between the client and the attorney. Thus, during the course of normal personal injury litigation, a wide variety of questions would be asked in order to prepare for trial or deposition, which would contain matters of a highly personal nature involving the client's background, criminal history, and personal habits of every kind. See, for example, *Bender's Forms of Discovery*, Vol. 1, questions 430, 446, 447. Such disclosures are clearly privileged, and, in view of the necessity to protect the ability of the client to seek legal advice, are rightly kept confidential. In particular, California provides for the confidentiality of such communications pursuant to California Evidence Code § 954, and, pursuant to § 955, *requires* the lawyer to assert the privilege on behalf of his client. Thus, there is indisputably much more than a reasonable expectation of privacy in such communications. *Katz v. United States*, 389 U.S. 347 (1967).

It therefore appears essential that this Court, particularly in view of the recent opinions in *Fisher v. United States, supra*, and *United States v. Miller, supra*, take this opportunity to confirm the sanctity of the attorney-client relationship and preclude the utilization of overbroad warrants authorizing the search of an innocent client's entire file, including highly personal, confidential material related to the attorney, based only upon an allegation of misconduct of the attorney.

CONCLUSION

The Court is asked to consider in the present petition vital issues relating to the very nature of the attorney-client relationship and the authority of the state to invade that relationship. If the opinion below is correct, the private confidences given to an attorney by his client may be invaded with no showing of impropriety on behalf of the client. A client, therefore, acts at his peril, if the state court is correct, when confiding in his attorney, and risks wholesale publication of his personal history should his attorney later be suspected of criminal activity. Such a result necessarily will curtail the delivery of confidences between client and attorney essential to the fair, swift and just operation of our judicial system. For these reasons it is respectfully submitted that a Writ of Certiorari should issue to review the judgment and order of the Court of Appeal of the State of California, Second Appellate District.

Respectfully submitted,

MAURICE HARWICK

DONALD M. RE

Attorneys for Petitioners

INDEX TO APPENDIXES

APPENDIX "A"

OPINION OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

NOT FOR PUBLICATION IN OFFICIAL REPORTS

In the Court of Appeal of the State of California, Second Appellate District, Division One.

THE PEOPLE, Plaintiff and Respondent, v. TOINETTE GOLDMAN PERLMAN; LORETTA DEMSKY, and WOODROW WOODY DAVIS, Defendants and Appellants.

2 Crim. No. 28953 (Super. Ct. No. A 315084).

[FILED November 23, 1977]

Appeals from judgments of the Superior Court of Los Angeles County. David N. Fitts, Judge. Affirmed.

Donald M. Re and Maurice Harwick for Defendants and Appellants.

Evelle J. Younger, Attorney General, Jack R. Winkler, Chief Assistant Attorney General, S. Clark Moore, Assistant Attorney General, Roy C. Preminger and Susan L. Frierson, Deputy Attorneys General, for Plaintiff and Respondent.

In count 1 of an indictment defendants Perlman, Demsky, and Davis were accused of conspiracy to commit capping (Pen. Code, § 182, subd. 1). After their motions to suppress evidence were granted in part and denied in part, they pleaded nolo contendere to count 1. Probation was granted. (Other counts against Perlman and Demsky were dismissed.)

Each defendant appeals from the judgment against him (order granting probation), and contends that (1) the

search warrant was invalid, (2) the affidavit for issuance of the warrant was insufficient, (3) the information in the affidavit was stale, (4) the warrant was overbroad, (5) the affidavit failed to establish probable cause that a crime was committed and probable cause for seizure of the items listed therein, and (6) "Attachment 'A' " to the affidavit was not incorporated in the affidavit, was not "sworn to," and was not before the magistrate; and therefore it could not be considered "in support of probable cause."

The search warrant was issued by a judge of the superior court on December 4, 1974. It recites that proof by affidavit of Officer Rooker was made that there is probable cause to believe that property described in the warrant may be found at locations described therein and that such property was used as a means of committing a felony, is possessed by a person with intent to use it as a means of committing a public offense, and is evidence which tends to show that a felony has been committed.

The warrant commanded search of locations at (1) 2500 Wilshire Boulevard, Suite 744, Los Angeles, California, with the words, "Gary H. Bock, Attorney," on the door; (2) 15910 Ventura Boulevard, Suite 1606, Encino, California, with the words, "Sanford S. Arnoff, Attorney at Law, Robert C. Van Auken, Attorney at Law, Robert Lee Burge, Attorney at Law" on the door; (3) a ranch style white stucco house (described in detail) at 3894 Terrybrae Terrace, Tarzana, California; (4) "Bekins Archival Services, Business Records Storage Center, 1335 S. Figueroa St., Los Angeles, California."

The warrant commanded search of said premises for (1) personal injury files of personal injury claims

pertaining to persons listed in "Attachment A" (a list of approximately 150 names of persons), (2) "Statute of Limitations books" of attorneys Gary Bock and Sanford Arnoff, listing cases represented by the attorneys from 1970 to 1974, (3) "Capping" books containing names, code numbers, and amounts to be paid to certain persons listed in the warrant (including Woody Davis, Toinette Goldman)[1], (4), (5), (6) cancelled checks and check records of checks drawn by Gary Bock and Sanford Arnoff to certain persons listed in the warrant, to persons listed on Attachment A, and to cappers listed in paragraph 3, and (7) personal injury files containing the same capper code numbers as described in paragraph 3.

The affidavit of Officer Rooker for issuance of the warrant consists of 22 pages, including attachments referred to as 1, 2, 3, and 4. The affidavit states in part that the attachments 1, 2, 3, 4, and *A* are incorporated therein by reference. The copy of the affidavit in the record on appeal includes attachments 1, 2, 3, 4, and A.

The affidavit contains statements which are in substance the same as those in the warrant regarding descriptions of persons, property, and locations of the property. Other statements in the affidavit (including attachments 1, 2, 3, 4, incorporated therein)[2] are as follows:

On June 24, 1974, Dr. Salomons told affiant that he treated victims of automobile accidents referred to him by various attorneys in the Los Angeles area. In 1969 he had

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[1]Defendant Perlman's name is Toinette Goldman Perlman.

[2]Those attachments are investigation reports by the Bureau of Investigation of the District Attorney of claims wherein an insurance company was the victim.

conversations with Jerry Perlman, who was the general manager of Gary Bock's law offices at 2500 Wilshire Boulevard, in which conversations it was agreed that accident victims whose claims were handled by Bock would be sent to him for examination and treatment; he would provide medical reports for treatments in whatever amounts Perlman thought were necessary to satisfactorily negotiate insurance claims; and that the reports would show the diagnosis and treatment for extensive periods of time "regardless of whether" the clients were actually injured and "regardless of whether" the client actually showed up for the treatments; he received referrals of hundreds of clients from Perlman over a period of two years; he provided several hundred false medical reports that were used by Bock and Arnoff; he (Dr. Salomons) had several telephone conversations with Arnoff wherein Arnoff verified that he had received the reports.

The affidavit states further: On June 27, 1974, Dr. Salomons gave copies of 11 medical reports to affiant. (Descriptions of those reports, including name of client, date of asserted accident, and fees for treatment of the client, are set forth in the affidavit.) A substantial amount of the fees listed therein was for X-ray films that were never made. Dr. Salomons told affiant that all of the reports were "completely fraudulent" and that no client referred to him by Perlman came to his office more than once or twice even though the reports indicate treatments from 12 to 30 times. Dr. Salomons gave the affiant medical files of persons on the list attached to the affidavit.

The Rooker affidavit states further: On July 30, 1974,

Mrs. Tennison said to affiant: She was employed as an administrator in the law office of Gary Bock at 2500 Wilshire Boulevard from November 1970 to June 1971. She was hired by Perlman to set up an "extensive 'capping' operation" and to maintain office records. Perlman provided the funds to pay cappers—she saw Perlman process $100,000 in thousand dollar bills which he used to pay cappers. Perlman said the money was stolen. Although Perlman's salary was carried on the books at $500 a month, his actual salary was 50 per cent of the net settlement of any case handled by the law office, approximately $500,000 a year. Both Perlman and Bock told her of the arrangement whereby Dr. Salomons provided the medical reports. In return for the referrals, Dr. Salomons "kicked back" 50 per cent of his fees to Perlman. Perlman had a similar arrangement with Dr. Schuchman. She "handled" about 50 cappers while she was employed at the office. She developed a coding system whereby each capper was assigned a three digit number. She gave affiant a list of such numbers. (At this point the affidavit sets forth a list of names with three digit code numbers and notations as to amounts of money.) She said that one of the men, Woody Davis,[3] on the list is a senior agent for Allstate Insurance Company, and that the names on the list under his name are names of agents of Allstate who were "organized into" the "capping ring."

The Rooker affidavit states further: On August 29, 1974, affiant had a conversation with Mr. and Mrs. Guiterrez wherein they said: In December 1973, when

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[3] A defendant herein is Woodrow Woody Davis.

they were in an automobile accident, a tow truck driver (Morales) referred them to Bock, who sent them to the Vernon Industrial Medical Clinic. At the clinic, Dr. Dick told them that they would have to return to the clinic every day for treatment. They only went there once or twice. Thereafter, they went to their own doctor. In July 1974 Perlman told them that their case had been settled and showed them a check for $10,000. Perlman also showed them a settlement statement which showed $635.50 for the clinic, and $1,967.50 for them as "client." They objected to the statement, and Perlman replied that the case had been settled and $1,967.50 was all that they would get. On August 29, 1974, Morales told affiant that in December 1973 a woman approached him at the scene of an accident and invited him to attend a party in the law offices of Bock. At the party he (Morales) was introduced to Bock and Perlman, and he was offered $200 for each person he sent to Bock's office as a client. On December 28, 1973, when Morales towed the automobile of Mr. and Mrs. Guiterrez from the scene of an accident, they rode with him in the truck, and he said that he knew an attorney who would help them. When they agreed to see the attorney, Morales took them to Bock's office. Morales identified a woman in a photograph (photograph of defendant Demsky) as the woman who invited him to the party at Bock's office.

The Rooker affidavit states further that on December 2, 1974, Susan Wanier said to affiant: That from December 1970 to April 1973 she was employed as a legal secretary in the office of Bock; and from April 1973 to August 1974 she was employed by Arnoff. Perlman "ran both offices" and made all important decisions on cases. Cappers

brought cases into the office. Perlman "made checks out to fictitious names" and had her cash the checks and give him the cash. Perlman, who received a percentage of each settlement, received false medical reports from Drs. Salomons, Schuchman, Spunt and Levy. Loretta Demsky and Toinette Perlman, who were employed by Bock, had accident claims wherein Schuchman provided false medical reports.

The Rooker affidavit states further: That based upon "the above," in the affidavit, affiant believes that a large scale capping ring has been operating from 1970 to the present time (December 5, 1974—date of affidavit) out of the law offices of Bock and Arnoff, and believes that files bearing the names of the above named clients will be found at said locations. On December 3, 1974, Mrs. Wanier told affiant that Bock's office frequently stored files at Bekins Archival Services, Business Records Storage Center, 1335 S. Figueroa St., Los Angeles.

Appellants (Toinette Perlman, Loretta Demsky, Woody Davis) contend that the warrant was invalid in that it authorized seizure of personal injury files in the law offices of Bock and Arnoff which were protected by the attorney-client privilege.

There is no such privilege "if the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud." (Evid. Code, § 956.) Also, there is no such privilege "as to a communication relevant to an issue of breach, by the lawyer or by the client, of a duty arising out of the lawyer-client relationship." (Evid. Code, § 958.)

"A Member of the State Bar shall not solicit professional

employment by advertisement or otherwise." (Rules of Professional Conduct of The State Bar of California, Rule 2-101.) It is unlawful for any person to act as a runner or capper for an attorney.[4] (Bus. & Prof. Code, § 6152; see *Hutchins v. Municipal Court,* 61 Cal. App. 3d 77, 88 [132 Cal. Rptr. 158].) "Any contract for professional services secured by any attorney at law in this State through the services of a runner or capper is void." (Bus. & Prof. Code, § 6154.) "[C]ommunications between attorney and client having to do with the client's contemplated criminal acts, or in aid or furtherance thereof, are not covered by the cloak of this privilege." (*Abbott v. Superior Court,* 78 Cal. App. 2d 19, 21 [177 P.2d 317].)

Appellants assert that the privilege was protected in "a situation very similar to that presented here" in *Burrows v. Superior Court,* 13 Cal. 3d 238 [118 Cal. Rptr. 166, 529 P.2d 590].

The *Burrows* case is factually distinguishable from the present case. In that case, the warrant was not limited to search of material relevant to the charge of misappropriation (p. 251)—the misconduct (misappropriation of client's funds) alleged in the affidavit occurred after the client's domestic relations case had been settled; and the domestic relations documents were not relevant to the charge in the affidavit. In the present case the personal injury files were relevant to the charges of capping. The material authorized to be seized by the warrant herein was not protected by the attorney-client privilege. The warrant was not "overbroad," as asserted by appellants.

[4]"A runner or capper is any person, firm, association or corporation acting in any manner or in any capacity as an agent for an attorney at law . . . in the solicitation or procurement of business for such attorney at law as provided in this article." (Bus. & Prof. Code, § 6151, subd. (a).)

Appellants contend further that the affidavit did not set forth sufficient facts to show that the informants (Dr. Salomons, Mrs. Tennison, Mr. and Mrs. Guiterrez, Mrs. Wanier, Morales, Reynolds, and Gustavis) had personal knowledge of the facts related or sufficient facts to show that the informants were reliable; that the information in the affidavit was "stale"; that the affidavit failed to establish probable cause that a crime was committed or for seizure of the items listed therein; and that Attachment "A" (attached affidavit) was not incorporated in the affidavit, was not "sworn to," and was not before the magistrate.

In *People v. Superior Court (Johnson),* 6 Cal. 3d 704, 711 [100 Cal. Rptr. 319, 493 P.2d 1183], it was said: "(1) The affidavit must allege the informant's statement in language which is factual rather than conclusionary and must establish that the informant spoke with personal knowledge of the matters contained in the statement; and (2) the affidavit must contain some underlying factual information from which the magistrate issuing the warrant can reasonably conclude that the informant was credible or his information reliable." (See *People v. Mesa,* 14 Cal. 3d 466, 470, fn. 1 [121 Cal. Rptr. 473, 535 P.2d 337].)

"The rules of appellate review recognize the impracticality of establishing a precise calculus by which the existence of probable cause is to be determined: the warrant can be upset only if the affidavit fails as a matter of law to set forth sufficient competent evidence supportive of the magistrate's finding of probable cause, since it is the function of the trier of fact, not the reviewing court, to appraise and weigh evidence when presented by affidavit as well as when presented by oral testimony." (*Skelton*

v Superior Court, 1 Cal. 3d 144, 150 [81 Cal. Rptr. 613, 460 P.2d 485].)

On appeal, "the question is not whether the informant was reliable but whether the magistrate could reasonably rely upon the information supplied to him under the circumstances." (*People v. Sanchez,* 24 Cal. App. 3d 664, 676 [101 Cal. Rptr. 193].) Information from a citizen who is a victim and witness of an offense may be reliable even though his reliability has not previously been tested (*People v. Hill,* 12 Cal. 3d 731, 761 [117 Cal. Rptr. 393, 528 P.2d 1]; *People v. Hogan,* 71 Cal. 2d 888, 890 [80 Cal. Rptr. 28, 457 P.2d 868]); and such information "needs no corroboration." (*People v. Sheridan,* 2 Cal. App. 3d 483, 487 [82 Cal. Rptr. 695].) Reliability may also be established by similar information from unrelated sources (*People v. Sheridan, supra,* p. 489; see *People v. Superior Court (Johnson), supra,* 6 Cal. 3d at p. 712), and from the detailed nature of the statement itself. (See *Skelton v. Superior Court, supra,* 1 Cal. 3d 144, 154, fn. 7.) Also, admissions of an informant against his penal interest "carry their own indicia of credibility" sufficient to support probable cause to search. (*United States v. Harris,* 403 U.S. 573, 583 [29 L. Ed. 2d 723, 91 S. Ct. 2075]; see *Skelton v. Superior Court, supra,* p. 154, fn. 7.)

Each informant, referred to in the affidavit herein, was a citizen who gave detailed information of the capping operation; and each of them, except Mr. and Mrs. Guiterrez was a citizen who performed acts that were utilized in such operation—Dr. Salomons as physician; Morales as tow truck driver; Mrs. Tennison as bookkeeper in Bock's office; Mrs. Wanier as legal secretary in the offices of Bock and Arnoff

for four years; and Gustavis and Reynolds as persons, experienced in the insurance field, who referred clients to Bock's law office. The statements of some of those informants were against their penal interests. Mr. and Mrs. Guiterrez were citizen victims of the operation. The affidavit contained statements sufficient to show that the informants spoke with personal knowledge of the matters therein, and contained underlying factual information from which the judge issuing the warrant could reasonably conclude that the informants were credible and their information was reliable.

With reference to appellants' assertion that the information in the affidavit was "stale," it is to be noted that there was substantial information that the capping operation was a continuous course of activities from its inception in 1970 to the latter part of 1974. (See *Frazzini v. Superior Court,* 7 Cal. App. 3d 1005, 1014 [87 Cal. Rptr. 32]); and it was a complex operation which was investigated extensively. The affidavit for issuance of the warrant was presented to the judge on December 4, 1974. In July 1974 Perlman presented to Mr. and Mrs. Guiterrez the settlement check and statement which pertained to a payment to the Vernon Medical Clinic and a payment to Mr. and Mrs. Guiterrez. Mrs. Wanier's statements related to capping activities which she observed during the four years she was a legal secretary in the law offices—until August 1974; and there is no indication in her statements that the activities had ceased prior to termination of her employment. It is to be noted further that the subject matter to be seized under the warrant consisted of files and financial and legal records of a law office. It is reasonable to assume that in the ordinary

course of business in a law office, such records are maintained for several years. (In the present case, many of the records were stored in Bekins' archives.)[5] Appellants' contention to the effect that the information upon which the warrant was based was "stale" is not sustainable.

There is no merit to the appellants' contention that Attachment "A" was not incorporated in the affidavit or "sworn to." The copy of the affidavit in the record on appeal states, at page "C" thereof, "Cancelled checks and check records of checks drawn on the checking accounts of Gary Bock and Sanford Arnoff, attorneys at law, in which the payee is any of the individual claimants listed above (see attached list marked ATTACHMENT NO. A.)" Attached thereto as a separate page following page C, there is a list of names; and at the bottom of the page are the words, "ATTACHMENT NO. 'A'." On the last page of the affidavit, above affiant's signature, it is stated: "The following attachments are incorporated by reference as though set forth herein *haec verba:* Probable cause for search (see Attachment(s) 1, 2, 3, 4, and A . . . "

As to appellants' further contention that there was no probable cause for issuance of the warrant, "The rules of appellate review recognize the impracticality of establishing a precise calculus by which the existence of probable cause is to be determined: the warrant can be upset only

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[5] In *Andresen v. Maryland,* 427 U.S. 463 [49 L. Ed. 2d 627, 96 S. Ct. 2737], wherein there was a three-month delay from the last alleged act and the issuance of the warrant,it was said (pp. 478-479, fn. 9):

"This contention is belied by the particular facts of the case. The business records sought were prepared in the ordinary course of petitioner's business in his law office . . . It is eminently reasonable to expect that such records would be maintained in those offices for a period of time and surely as long as the three months required for investigation of a complex real estate scheme."

if the affidavit fails as a matter of law to set forth sufficient competent evidence supportive of the magistrate's finding of probable cause, since it is the function of the trier of fact, not the reviewing court, to appraise and weigh evidence when presented by affidavit as well as when presented by oral testimony." (*Skelton v. Superior Court, supra,* 1 Cal. 3d at p. 150.) In the present case, the affidavit stated sufficient competent evidence to support the finding of probable cause by the judge who issued the warrant.

The judgments are affirmed.

WOOD, P.J.

We concur:

LILLIE, J.

HANSON, J.

NOTICE OF DENIAL OF PETITION FOR REHEARING

In the Court of Appeal of the State of California, Second Appellate District.

(Post Card Notice)

Los Angeles, Cal. DEC 16 1977

TITLE (People
(*vs.*
(Perlman, et al.

No. 28953

THE COURT:

Petition for rehearing denied.

Clay Robbins, *Clerk*

DENIAL OF PETITION FOR HEARING

(Post Card Notice)

CLERK'S OFFICE, SUPREME COURT
4250 State Building

San Francisco, California 94102

JAN 19 1978

I have this day filed Order HEARING DENIED

In re: 2 Crim. *No.* 28953

People

vs.

Perlman, et al.

Respectfully,

G. E. BISHEL
Clerk

PERTINENT PORTIONS OF STATUTORY PROVISIONS INVOLVED

California Penal Code § 182.

[Criminal conspiracy: Acts constituting: Punishment: Venue]

If two or more persons conspire:

1. To commit any crime.

. . . .

They are punishable as follows:

. . . .

When they conspire to commit any other felony, they shall be punishable in the same manner and to the same extent as is provided for the punishment of the said felony.

California Business and Professions Code § 6151.

"Runner," "capper," and "agent" defined.

As used in this article:

(a) A runner or capper is any person, firm, association or corporation acting in any manner or in any capacity as an agent for an attorney at law, whether the attorney is admitted in California or any other jurisdiction, in the solicitation or procurement of business for such attorney at law as provided in this article.

California Evidence Code § 954

Lawyer-Client Privilege

Subject to § 912 and except as otherwise provided in this article, the client, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer if the privilege is claimed by:

(a) The holder of the privilege.

(b) A person who is authorized to claim the privilege by the holder of the privilege; or

(c) The person who was the lawyer at the time of the confidential communication, but such person may not claim the privilege if there is no holder of the privilege in existence or if he is otherwise instructed by a person authorized to permit disclosure.

California Evidence Code § 955

When Lawyer Required To Claim Privilege

The lawyer who received or made a communication subject to the privilege under this article shall claim the privilege whenever he is present when the communication is sought to be disclosed and is authorized to claim the privilege under subdivision (c) of § 954.

STATE OF CALIFORNIA)
) ss.
County of Orange)

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and employed in the County of Orange, State of California, over the age of eighteen years and not a party to the within action or proceeding; that

My business address is 326½ Main Street, Huntington Beach, California 92648, that on APRIL 17 1978, I served the within PETITION FOR WRIT OF CERTIORARI (Perman et al v. People of State of California) on the following named parties by depositing the designated copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office in the City of Huntington Beach, California, addressed to said parties at the addresses as follows:

Clerk, Los Angeles County Superior Court
111 North Hill Street
Los Angeles, California 90012
For: Hon. David N. Fitts, Judge
(1 copy)

District Attorney
County of Los Angeles
849 So. Broadway
Los Angeles, California 90012
(1 copy)

Clerk, Supreme Court of California
3580 Wilshire Boulevard, Suite 213
Los Angeles, California 90010
(1 copy)

Attorney General
State of California
3580 Wilshire Boulevard
Los Angeles, California 90010
(2 copies)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on APRIL 17th, 1978, at HUNTINGTON BEACH, CALIFORNIA.

D. A. Standefer

Dean-Standefer, 326½ Main St., Huntington Beach, Ca. 92648
(714) 536-7161